



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (“the Act”). The landlord applied for a monetary order for damage to the rental unit pursuant to section 67; authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for: the return of the security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant and her representative confirmed receipt of the landlord’s Application for Dispute Resolution (“ADR”) and evidentiary materials submitted for this hearing. The landlord confirmed receipt of the tenant’s ADR and the evidentiary materials submitted for the tenant’s application.

### Issue(s) to be Decided

Is the landlord entitled to monetary order for damage to the unit?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit or is the tenant entitled to the return of the deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on May 1, 2014 as a fixed term tenancy. It continued after the end of the fixed term with successive fixed term tenancy agreements. The rental amount of

\$2000.00 was payable on the 1<sup>st</sup> of each month. The landlord has applied to be compensated by the tenant for repair and clean-up costs at the end of this tenancy. The landlord continues to hold the tenant's \$925.00 security deposit paid at the outset of the tenancy. The landlord applied to retain the deposit towards the monetary amount he claims the tenant owes. The tenant applied for the return of the security deposit however the tenant agreed to some deductions sought by the landlord.

The tenant vacated the rental unit on April 29, 2017 after providing one months' notice that the tenant would vacate the rental unit. A condition inspection was conducted at move-in and move-out and the report was submitted as evidence for this hearing. At move in, the condition inspection report indicates that the unit was not dirty or damaged. At move-out, the report indicates areas of the unit left dirty or damaged including;

- a dirty stove;
- a dirty fridge;
- dirty kitchen drawers;
- a dirty microwave;
- a dirty toilet seat;
- a dirty bathroom door;
- a damaged living room floor; and
- a damaged master bedroom floor.

In addition to the items marked off in the move-out report, there is extensive hand written notes on the report. The handwritten notes indicate stains on the carpet of the bedroom and scratches on the dining room floor as well as burnt out light bulbs and the items listed as dirty above. There is no indication on the condition inspection report regarding an agreement between the parties regarding compensation for the damage to the unit or retention of a portion of the security deposit. Both the landlord and tenant signed the reports and move-in and move-out. Further, the landlord provided evidence to show that they had sent a copy of the report to the tenant at the end of the tenancy.

As evidence to support their claim for costs, the landlord submitted an estimate for the refinishing of the floors in the living room in the amount of \$1685.25 and sought to recover \$200.00 to make further attempts to address stains on the carpet. The landlord submitted a receipt for the purchase of light bulbs totalling \$34.08 and a cleaning receipt in the amount of \$100.00. The landlord's total claim is as follows,

Item	Amount
Cleaning of Rental Unit	\$100.00
ESTIMATE for floor repair	1685.25

ESTIMATE for carpet stain removal	200.00
ESTIMATE for window sill repair, replace	315.00
Light bulb replacement	34.08
Administrative fee	275.00
Less Tenant's Security Deposit held	-925.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1784.33</b>

The landlord testified that there are still stains remaining on the carpet. The landlord testified that she hasn't had a chance to make the repairs but submitted some estimates for the cost of repairs. Despite the outstanding repairs, a new tenant has moved in to the rental unit. The landlord testified that painting had not been done yet but is required. She provided one estimate in the amount of \$315.00. She also testified that the floors cannot be repaired and need to be replaced at an estimated cost of \$1685.25. She provided one written estimate.

The tenant agreed that the landlord is entitled to recover the cleaning fee; the cost of the lightbulb replacement and an amount for floor repair but denied responsibility for stains on the carpet. The tenant also testified that the landlord has exaggerated the damage to the floors. The tenant testified that the floors could be repaired by removing and replacing scratched pieces of floor. He testified that he attempted some minor repairs prior to move-out. He testified that he received several estimates by phone and he submitted one estimate in writing in the amount of \$420.00 to make the floor scratch repairs using matching colour and re-stain the floorboards. The tenant testified that, prior to the new tenants moving in to the rental unit, the tenant offered to fix the floor for the landlord in accordance with the estimate or another similar estimate.

The tenant testified that the landlord has not provided evidence of the amount of their estimate for the carpet stains. He testified that he had done his part by cleaning professionally at the end of tenancy. He submitted a copy of his carpet cleaning receipt dated April 29, 2017 in his evidence package. He refers to emails he wrote to the landlord and submitted for this hearing including an email dated May 3, 2017 that states, "I gave you the receipt for the carpet cleaning fee on the inspection day, and for the hardwood floor, I have pictures of repairing process and the receipt for the tool..."

The tenant testified that the cost of painting is inflated by the landlord. He submits that the landlord had no evidence to support their claim that painting was necessary. He also testified that the paint for that unit's walls is still inside the rental unit and therefore the painting can be done easily without much expense. Finally, he notes that the tenant has lived in the rental unit for 3 years.

The landlord also sought to recover a \$275.00 administrative fee subject to section 18 of the residential tenancy agreement which reads, "[at] the end of a tenancy, the tenant must vacate the property in accordance to the Residential Tenancy Act section 37(2)..." or incur an administrative fee of 10% of the costs of the services required to clean and repair. The tenant submitted that this administrative fee is unjust and is an additional penalty beyond the money that the landlord has sought for actual expenditures. The tenant submitted that the landlord should be required to submit details of expenditures to support the administrative amount.

### Analysis

With respect to the landlord's claim for compensation for cleaning and damages, section 37 of the Act describes the requisite condition of a rental unit at the end of the tenancy;

**37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.**

**(2) When a tenant vacates a rental unit, the tenant must**

**(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

**(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

Responsibilities of the landlord and the tenant to the rental unit are outlined at Residential Tenancy Policy Guideline No. 1. The policy guideline includes a discussion of "reasonable wear and tear" as it appears in section 37 of the Act,

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate*

*damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*

I have reviewed the evidence submitted by both parties and I find that the damage described by the landlord can be considered reasonable wear and tear over the course of a 3 year tenancy. The carpets in the rental unit were several years old when the tenant moved into the unit, there have been prior tenants in the unit and the current tenant resided in the unit for 3 years. Furthermore, I note that the photographs submitted by the landlord show very minimal stain or marks in the rental unit carpet. In consideration of all these factors, I find that the landlord has not shown that the carpet damage is as a result of negligence or intentional damage by the tenant.

The landlord submitted photographs to show the rental unit's condition at the end of this tenancy. She also submitted the condition inspection report that, pursuant to *Residential Tenancy Regulation 21*, is the best evidence without evidence to the contrary. I accept the testimony of the landlord that the floors in the rental unit required *some* repair at the end of the tenancy. In viewing the photographic evidence submitted by the landlord with respect to the floors, I accept the tenant's evidence that the floors could be repaired or patched instead of replaced entirely. The damage represents a small portion of the flooring. Therefore, I find that the landlord is entitled to a general damage amount of \$500.00 for repairing the floors in the rental unit at the end of the tenancy.

As the tenant does not dispute the charge for 3 light bulbs, I find that the landlord is entitled to recover the cost of light bulbs in an amount totalling \$34.08.

Based on the condition inspection report as well as the photographs of the unit, I find that the tenant should compensate the landlord for some cleaning costs. The tenant acknowledged that the landlord is entitled to some additional cleaning costs. I find that the landlord has shown some areas of the home remained dirty at move-out despite the tenant's efforts. The tenant simply ran out of time to complete cleaning. The landlord submitted a receipt for cleaning in the amount of \$100.00. Therefore, based on all of the circumstances, I find that the landlord is entitled to \$100.00 for the cost of cleaning.

The landlord also claimed that the window sills in the rental unit were damaged over the course of this tenancy. The tenant disputed responsibility for this alleged damage. I find that the landlord's photographic evidence and documentary evidence do not provide sufficient evidence to suggest that the window sills are damaged as a result of negligent

or intentional damage of the tenant as opposed to wear and tear over the course of 3 years. The photographic evidence does not clearly show identifiable damage to the rental unit. Given the length of the tenancy, and the standards provided in Policy Guideline No. 1, I find that the landlord has not provided sufficient evidence to show that the window sills were damaged by the tenant and not as a result of general wear and tear.

With respect to the landlord's \$275.00 "administrative fee", I agree with the tenant's submission that this fee is punitive in nature. The landlord is entitled to recover her out of pocket costs or costs that reflect loss to her as a result of this tenancy. She will recover the costs for her loss as a result of the damage to the floor as well as the cleaning and replacement of light bulbs: I do not find that this circumstance warrants an administrative amount representing 10% of the services to the unit at the end of the tenancy when the tenant has agreed to pay the cost of the services themselves. I find that this \$275.00 administrative fee would be more appropriate if it were to replace the costs the landlord has incurred but not in addition to the costs. I decline to award this fee.

With respect to the tenant's security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the landlord was informed of the forwarding address by April 30, 2017 – the day after the tenant vacated the rental unit. Therefore, the landlord had 15 days after April 30, 2017 to take one of the actions outlined above. The landlord applied to retain the tenant's security deposit towards a monetary amount for damage on May 12, 2017 in accordance with the requirements of the *Act*.

As both parties were partially successful in their application, I find that both parties are responsible for the cost of filing their own applications (filing fee).

Based on all of the evidence before me, the landlord is entitled to retain a portion of the tenant's security deposit as follows,

Item	Amount
Tenant's Security Deposit held by the landlord	\$925.00
Cleaning of Rental Unit	-100.00
Floor damage	-500.00

Light bulb replacement	-34.08
<b>Total Monetary Order</b>	<b>\$290.92</b>

The tenant is entitled to a monetary order for the return of the remainder of the security deposit in the amount of \$290.92.

Conclusion

I allow the landlord to retain \$634.08 of the tenant's \$925.00 security deposit.

I grant the tenant a monetary order in the amount of \$290.92.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 15, 2017

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Residential Tenancy Branch